IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 873 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's Orders	Court's or Judge's Orders

P.K. Hushing for the appellants.

CORAM: S.B. DESHMUKH, J.
DATE : AUGUST 16, 2006.

P.C. :

1. Heard learned counsel for the appellant.

2. This Second Appeal is filed by the original plaintiff in R.C.S. No. 37-A/85 against the respondents, who were defendants in this suit. Parties herein are referred to the status as plaintiff and defendants in R.C.S. No. 37-A/1995. The suit filed by the plaintiff was for declaration and perpetual injunction. The defendants

after entering their appearance filed their written statement at Exhibit-15. The trial court after considering the rival pleadings, framed as many as six issues in this suit. Issue no.1, was regarding ownership of the suit property and finding is recorded against the plaintiff. The claim of the plaintiff that the plaintiff was in exclusive possession of the suit property as on the date of the suit is not accepted by the Trial Court while recording the finding on Issue no.2. Considering the allegation of the plaintiff that his possession was obstructed by the defendant, Issue no.3 was framed by the Trial Court and finding was recorded against the plaintiff. Issue no.4 was inrespect of entitlement of the plaintiff regarding declaration as prayed in the suit. Finding on Issue no.4 recorded by the Trial court is against the

plaintiff. Injunction sought by the plaintiff, is Issue No.5 and finding is against the plaintiff.

3. The Trial court, has referred to the oral as well as documentary evidence laid on behalf of the parties. The Trial court has also referred to the alleged agreement Exhibit 57. The plaintiff, has also alleged that the partition in relation to ancestral properties did take place between the parties some where in the year 1980. After referring to the evidence of the parties, the Trial Court, has dismissed the suit.

4. The plaintiff being aggrieved and dissatisfied by the judgment and decree passed by the Trial Court in R.C.S. No. 37 of 1995 filed R.C.A. No. 104 of 1998 in the court of Learned District Judge, Baramati,

District Pune under Section 96 of Criminal Procedure Code. The first appellate court, framed as many as six issues for determination in accordance with the scheme under Order 41 Rule 31 of CPC. The First appellate court has referred to the oral as well as documentary evidence laid on behalf of the parties. On behalf of plaintiff on the basis of power of attorney, his daughter P.W.No.1 Smt. Anita Chandrakant Jagtap is examined at Exhibit 54. Apart from the P.W.No.1, one more witness by name Pandurang Vyankatrao Kadam is examined on behalf of the plaintiff. Consolidation statement at Exhibit 61, zerox copy of the sale deed dated June 27, 1996 at Ex.56 and Agreement at Ex.57 is also referred to by the First appellate court. On behalf of the defendants, defendant no.1 has adduced evidence. P.W.no.2, is also examined on behalf

of the defendants. Revenue record by way of 7x12 extract as well as Mutation entry no.99 and mutation entry no. 1280 have been considered by the first appellate court.

5. The first appellate court, while considering the evidence on record, has taken into consideration the evidence of Smt. Anita, holder of power of attorney,. she has admitted in her cross examination that she was not present a the time of execution of the agreement Exhibit 57. She has also admitted that she was not present, at the time of execution in relation to Exhibit 57. On the background of this evidence/admissions given by Smt. Anita it was difficult for the first appellate court to accept the evidence laid in behalf of the plaintiff in relation to Exhibit-57. The first appellate court

also did not accept the agreement Exhibit 57 since the details of the said agreement have not been mentioned in the said agreement. The first appellate court, has also examined the claim of the plaintiff, in relation to purchase of the suit property from his personal income and status of the suit property as self-acquired property. In this respect the First appellate court has referred to the evidence of power of attorney holder, Smt. Anita, and did not accept the explanation tendered by her. The claim of the plaintiff that he was working as a carpenter and from his earnings, he has purchased the suit property, itself is not accepted by the First appellate Court. The court thereafter, referred to the claim of the defendants, regarding partition under Section 85 of the Maharashtra Land Revenue Act, The first appellate

court, ultimately recorded a finding, against the plaintiff. In para 15 of the judgment the first appellate court has referred to the evidence of P.W.No.2 Pandurang Kadam, Exhibit 57.

The first appellate court has noted the discrepancy in the evidence and ultimately it has dis-believed the evidence of witness examined on behalf of the plaintiff in relation to document Ex.57.

6. The first appellate court dealt with the oral as well as documentary evidence in relation to Exhibit 57 and ultimately recorded a finding, against the plaintiff. Learned counsel for the appellant has referred to synopsis where four points have been listed. According to the learned counsel for the appellant these are the grounds

involving substantial question of law in this Second Appeal. I have considered the grounds referred to in the synopsis. In my view, the question of fact regarding the status of the property as well as partition alleged by the plaintiff is recorded by the trial court on appreciation of oral as well as documentary evidence against the plaintiff. This finding of fact recorded by the Trial court is confirmed with on appreciation of the evidence by the first appellate court. It is not the case that legal admissible evidence is left out of consideration by the courts below while recording the finding against the plaintiff. It is also not the case that the evidence which is legally not admissible is considered by the courts below and recorded a finding against the plaintiff. In my view, no substantial question of law

is involved in this Second Appeal. In the event, Second Appeal stands dismissed.

sd/-

(JUDGE)